

# Michael Faillace & Associates, P.C.

Employment and Litigation Attorneys

60 East 42<sup>nd</sup> Street, Suite 4510  
New York, New York 10165

Telephone: (212) 317-1200  
Facsimile: (212) 317-1620

October 23, 2020

BY ECF

Honorable Laura Taylor Swain  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl St.  
New York, NY 10007-1312

**MEMO ENDORSED**

Re: Baten-Perez v. AK Café of New York LLC, et al.,  
17-cv-5931 (LTS) (DF)

Dear Judge Swain:

We represent Plaintiff Efrain Baten-Perez in the above-referenced matter. We write this letter motion to strike Defendants' "amended" summary judgment motion as untimely. Judge Freeman's pretrial schedule Order, issued July 29, 2020, provided an August 26 deadline for dispositive motions, which was later extended by until October 9, 2020.

By Order of October 14, 2020 Your Honor terminated Defendants Motion for Summary Judgment (Dkt 49) without prejudice to reinstatement *upon application*, and upon notice to adverse parties and accompanied by the requisite certification. Plaintiff and Defendant's counsel held a telephone call on October 19, 2020, during which conversation, Plaintiff's counsel agreed to drop the Eighth Cause of Action as to all Defendants.

On October 22, Defendant filed an "Amended Motion" for summary judgment along with a revised Memorandum of Law. Defendant however, made no application for reinstatement of motion to the court.

Plaintiff is prepared to oppose Defendant Dogan's motion but believes that the filing of the instant motion will delay the ultimate resolution of this matter by settlement or trial. Mr. Dogan's motion relies heavily on the testimony of Mr. Dogan himself in a deposition taken of him. Plaintiff

Page 2

contests many of Mr. Dogan's assertions. Accordingly, this issue is very much a dispute of fact which would best be addressed at trial.

Plaintiff therefore respectfully requests that the motion for summary Judgment be stricken as untimely, and that any dispute of fact as to Mr. Dogan's status as employer be addressed at trial.

We thank the Court for its attention to this matter.

Respectfully Submitted,

/s/ Daniel Tannenbaum  
Michael Faillace & Associates, P.C.  
Attorneys for Plaintiff

cc: (By ECF)  
Dove Burns  
Stacey Pitcher  
Emre Polat  
Attorney for Defendants

The Court will in this instance deem the filing of the amended motion an application for reinstatement, which is granted as of today. The summary judgment motion shall be briefed in accordance with SDNY Local Civil Rule 6.1, with today being deemed the filing date of the motion. The foregoing motion to strike is denied. DE#57 resolved.

SO ORDERED.

10/27/2020

/s/ Laura Taylor Swain, USDJ